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7
8 **UNITED STATES DISTRICT COURT**
9 **CENTRAL DISTRICT OF CALIFORNIA**

10 MOISES VILLALOBOS,

11 Plaintiff,

12 vs.

13
14 TOOL TIME SUPPLY; MUSTAPHA
15 IBNOUJALA, AS TRUSTEE OF THE
16 IBNOUJALA TRUST; and DOES 1 to 10,
17 Defendants.

Case No.:

COMPLAINT FOR INJUNCTIVE
RELIEF AND DAMAGES FOR DENIAL
OF CIVIL RIGHTS OF A DISABLED
PERSON IN VIOLATIONS OF

1. AMERICANS WITH DISABILITIES
ACT, 42 U.S.C. §12131 et seq.;

2. CALIFORNIA'S UNRUH CIVIL
RIGHTS ACT;

3. CALIFORNIA'S DISABLED
PERSONS ACT;

4. CALIFORNIA HEALTH & SAFETY
CODE;

5. NEGLIGENCE

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23 Plaintiff MOISES VILLALOBOS ("Plaintiff") complains of Defendants TOOL
24 TIME SUPPLY; MUSTAPHA IBNOUJALA, AS TRUSTEE OF THE IBNOUJALA
25 TRUST; and DOES 1 to 10 ("Defendants") and alleges as follows:

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PARTIES

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2 1. Plaintiff is a California resident with a physical disability. Plaintiff is
3 paraplegic, and is substantially limited in his ability to walk. Plaintiff requires the use of a
4 wheelchair at all times when traveling in public.

5 2. Defendants are, or were at the time of the incident, the real property owners,
6 business operators, lessors and/or lessees of the real property for a tool store ("Business")
7 located at or about 2713 W. Burbank Blvd., Burbank, California.

8 3. The true names and capacities, whether individual, corporate, associate or
9 otherwise of Defendant DOES 1 through 10, and each of them, are unknown to Plaintiff,
10 who therefore sues said Defendants by such fictitious names. Plaintiff will ask leave of
11 Court to amend this Complaint when the true names and capacities have been
12 ascertained. Plaintiff is informed and believes, and, based thereon, alleges that each such
13 fictitiously named Defendants are responsible in some manner, and therefore, liable to
14 Plaintiff for the acts herein alleged.

15 4. Plaintiff is informed and believes, and thereon alleges that, at all relevant
16 times, each of the Defendants was the agent, employee, or alter-ego of each of the other
17 Defendants, and/or was acting in concert with each of the other Defendants, and in doing
18 the things alleged herein was acting with the knowledge and consent of the other
19 Defendants and within the course and scope of such agency or employment relationship.

20 5. Whenever and wherever reference is made in this Complaint to any act or
21 failure to act by a defendant or Defendants, such allegations and references shall also be
22 deemed to mean the acts and failures to act of each Defendant acting individually, jointly
23 and severally.

24 **JURISDICTION AND VENUE**

25 6. The Court has jurisdiction of this action pursuant to 28 USC §§ 1331 and
26 1343 for violation of the Americans with Disabilities Act of 1990, (42 USC §12101, *et*
27 *seq.*).
28

7. Pursuant to pendant jurisdiction, attendant and related causes of action, arising from the same nucleus of operating facts, are also brought under California law, including, but not limited to, violations of California Civil Code §§51, 51.5, 52(a), 52.1, 54, 54., 54.3 and 55.

8. Plaintiff's claims are authorized by 28 USC §§ 2201 and 2202.

9. Venue is proper in this court pursuant to 28 USC §1391(b). The real property which is the subject of this action is located in this district, Los Angeles County, California, and that all actions complained of herein take place in this district.

FACTUAL ALLEGATIONS

10. In or about July of 2024, Plaintiff went to the Business.

11. The Business is a tool store business establishment, open to the public, and is a place of public accommodation that affects commerce through its operation. Defendants provide parking spaces for customers.

12. While attempting to enter the Business during each visit, Plaintiff personally encountered a number of barriers that interfered with his ability to use and enjoy the goods, services, privileges, and accommodations offered at the Business.

13. To the extent of Plaintiff's personal knowledge, the barriers at the Business included, but were not limited to, the following:

- a. Defendants failed to maintain the parking space designated for persons with disabilities to comply with the federal and state standards. Defendants failed to maintain the facility to be readily accessible, as there were shelves and work equipment being stored in both the accessible parking stall and the accessible aisle.

b. Defendants failed to comply with the federal and state standards for the parking space designated for persons with disabilities. Defendants failed to provide proper van accessible space designated for the persons with disabilities as there were no “NO PARKING” markings painted on the surface of the access aisle.

- c. Defendants failed to maintain the parking space designated for persons with disabilities to comply with the federal and state standards. Defendants failed to maintain the parking space identification signs to be visible.
- d. Defendants failed to maintain the parking space designated for persons with disabilities to comply with the federal and state standards. Defendants failed to maintain the mark on the space with the International Symbol of Accessibility, resulting in the paint becoming severely deteriorated, hindering visibility.
- e. Defendants failed to maintain the parking space designated for persons with disabilities to comply with the federal and state standards. Defendants failed to maintain the blue borderlines and blue hatched lines painted on the ground as required, resulting in the markings becoming severely deteriorated, hindering visibility.

14. These barriers and conditions denied Plaintiff full and equal access to the Business and caused Plaintiff difficulty and frustration. Plaintiff wishes to return and patronize the Business; however, Plaintiff is deterred from visiting the Business because his knowledge of these violations prevents him from returning until the barriers are removed.

15. Based on the violations, Plaintiff alleges, on information and belief, that there are additional barriers to accessibility at the Business after further site inspection. Plaintiff seeks to have all barriers related to his disability remedied. *See Doran v. 7-Eleven, Inc.* 524 F.3d 1034 (9th Cir. 2008).

16. In addition, Plaintiff alleges, on information and belief, that Defendants knew that particular barriers render the Business inaccessible, violate state and federal law, and interfere with access for the physically disabled.

17. At all relevant times, Defendants had and still have control and dominion over the conditions at this location and had and still have the financial resources to

1 remove these barriers without much difficulty or expenses to make the Business
 2 accessible to the physically disabled in compliance with ADDAG and Title 24
 3 regulations. Defendants have not removed such barriers and have not modified the
 4 Business to conform to accessibility regulations.

5 **FIRST CAUSE OF ACTION**

6 **VIOLATION OF THE AMERICANS WITH DISABILITIES ACT OF 1990**

7 18. Plaintiff incorporates by reference each of the allegations in all prior
 8 paragraphs in this complaint.

9 19. Under the Americans with Disabilities Act of 1990 (“ADA”), no individual
 10 shall be discriminated against on the basis of disability in the full and equal enjoyment of
 11 the goods, services, facilities, privileges, advantages, or accommodations of any place of
 12 public accommodation by any person who owns, leases, or leases to, or operates a place
 13 of public accommodation. *See* 42 U.S.C. § 12182(a).

14 20. Discrimination, *inter alia*, includes:

- 15 a. A failure to make reasonable modification in policies, practices, or
 16 procedures, when such modifications are necessary to afford such
 17 goods, services, facilities, privileges, advantages, or accommodations
 18 to individuals with disabilities, unless the entity can demonstrate that
 19 making such modifications would fundamentally alter the nature of
 20 such goods, services, facilities, privileges, advantages, or
 21 accommodations. 42 U.S.C. § 12182(b)(2)(A)(ii).
- 22 b. A failure to take such steps as may be necessary to ensure that no
 23 individual with a disability is excluded, denied services, segregated or
 24 otherwise treated differently than other individuals because of the
 25 absence of auxiliary aids and services, unless the entity can
 26 demonstrate that taking such steps would fundamentally alter the
 27 nature of the good, service, facility, privilege, advantage, or
 28

accommodation being offered or would result in an undue burden. 42 U.S.C. § 12182(b)(2)(A)(iii).

- c. A failure to remove architectural barriers, and communication barriers that are structural in nature, in existing facilities, and transportation barriers in existing vehicles and rail passenger cars used by an establishment for transporting individuals (not including barriers that can only be removed through the retrofitting of vehicles or rail passenger cars by the installation of a hydraulic or other lift), where such removal is readily achievable. 42 U.S.C. § 12182(b)(2)(A)(iv).
- d. A failure to make alterations in such a manner that, to the maximum extent feasible, the altered portions of the facility are readily accessible to and usable by individuals with disabilities, including individuals who use wheelchairs or to ensure that, to the maximum extent feasible, the path of travel to the altered area and the bathrooms, telephones, and drinking fountains serving the altered area, are readily accessible to and usable by individuals with disabilities where such alterations to the path or travel or the bathrooms, telephones, and drinking fountains serving the altered area are not disproportionate to the overall alterations in terms of cost and scope. 42 U.S.C. § 12183(a)(2).

21. Where parking spaces are provided, accessible parking spaces shall be provided. 1991 ADA Standards § 4.1.2(5); 2010 ADA Standards § 208. One in every eight accessible spaces, but not less than one, shall be served by an access aisle 96 in (2440 mm) wide minimum and shall be designated “van accessible.” 1991 ADA Standards § 4.1.2(5)(b). For every six or fraction of six parking spaces, at least one shall be a van accessible parking space. 2010 ADA Standards § 208.2.4.

22. At least one accessible route shall connect accessible building, facilities, elements, and spaces that are on the same site. 1991 ADA Standards § 4.3.2. A public

1 accommodation shall maintain in operable working condition those features of facilities
2 and equipment that are required to be readily accessible to and usable by persons with
3 disabilities by the Act or this part. 28 C.F.R. 35.211(a).

4 23. Here, Defendants failed to maintain the facility to be readily accessible, as
5 there were shelves and work equipment being stored in both the accessible parking stall
6 and the accessible aisle.

7 24. Under the ADA, the method and color of marking are to be addressed by
8 State or local laws or regulations. See 36 C.F.R., Part 1191. Under the California
9 Building Code (“CBC”), the parking space identification signs shall include the
10 International Symbol of Accessibility. Parking identification signs shall be reflectorized
11 with a minimum area of 70 square inches. Additional language or an additional sign
12 below the International Symbol of Accessibility shall state “Minimum Fine \$250.” A
13 parking space identification sign shall be permanently posted immediately adjacent and
14 visible from each parking space, shall be located with its centerline a maximum of 12
15 inches from the centerline of the parking space and may be posted on a wall at the
16 interior end of the parking space. See CBC § 11B-502.6, et seq.

17 25. Moreover, an additional sign shall be posted either in a conspicuous place at
18 each entrance to an off-street parking facility or immediately adjacent to on-site
19 accessible parking and visible from each parking space. The additional sign shall not be
20 less than 17 inches wide by 22 inches high. The additional sign shall clearly state in
21 letters with a minimum height of 1 inch the following: “Unauthorized vehicles parked in
22 designated accessible spaces not displaying distinguishing placards or special license
23 plates issued for persons with disabilities will be towed away at the owner’s expense...”
24 See CBC § 11B-502.8, et seq.

25 26. Here, Defendants failed to maintain the visibility of all the parking space
26 identification signs: the sign with the International Symbol of Accessibility, the sign
27 stating, “Minimum Fine \$250”, the sign stating “Van Accessible”, and the sign with the
28 specific language stating “Unauthorized vehicles parked in designated accessible spaces

1 not displaying distinguishing placards or special license plates issued for persons with
2 disabilities will be towed away at the owner's expense...". Defendants failed to maintain
3 visibility as they were obstructed by a shelf and various work equipment.

4 27. For the parking spaces, access aisles shall be marked with a blue painted
5 borderline around their perimeter. The area within the blue borderlines shall be marked
6 with hatched lines a maximum of 36 inches (914 mm) on center in a color contrasting
7 with that of the aisle surface, preferably blue or white. The words "NO PARKING" shall
8 be painted on the surface within each access aisle in white letters a minimum of 12 inches
9 (305 mm) in height and located to be visible from the adjacent vehicular way. CBC §
10 11B-502.3.3.

11 28. Here, Defendants failed to provide a proper access aisle as there were no
12 "NO PARKING" markings painted on the parking surface. Additionally, the blue
13 borderlines and blue hatched lines painted on the parking surface were poorly
14 maintained, resulting in the markings becoming severely deteriorated, hindering
15 visibility.

16 29. The surface of each accessible car and van space shall have surface
17 identification complying with either of the following options: The outline of a profile
18 view of a wheelchair with occupant in white on a blue background a minimum 36" wide
19 by 36" high (914 mm x 914 mm). The centerline of the profile view shall be a maximum
20 of 6 inches (152 mm) from the centerline of the parking space, its sides parallel to the
21 length of the parking space and its lower side or corner aligned with the end of the
22 parking space length or by outlining or painting the parking space in blue and outlining
23 on the ground in white or a suitable contrasting color a profile view of a wheel chair with
24 occupant. See CBC § 11B-502.6.4, et seq.

25 30. Here, Defendants failed to maintain the International Symbol of
26 Accessibility painted on the surface as required, resulting in the markings becoming
27 severely deteriorated, hindering visibility.

1 31. A public accommodation shall maintain in operable working condition those
2 features of facilities and equipment that are required to be readily accessible to and usable
3 by persons with disabilities by the Act or this part. 28 C.F.R. 35.211(a).

4 32. By failing to maintain the facility to be readily accessible and usable by
5 Plaintiff, Defendants are in violation of Plaintiff's rights under the ADA and its related
6 regulations.

7 33. The Business has denied and continues to deny full and equal access to
8 Plaintiff and to other people with disabilities. Plaintiff has been and will continue to be
9 discriminated against due to the lack of accessible facilities, and therefore, seeks
10 injunctive relief to alter facilities to make such facilities readily accessible to and usable
11 by individuals with disabilities.

12 **SECOND CAUSE OF ACTION**

13 **VIOLATION OF THE UNRUH CIVIL RIGHTS ACT**

14 34. Plaintiff incorporates by reference each of the allegations in all prior
15 paragraphs in this complaint.

16 35. California Civil Code § 51 states, "All persons within the jurisdiction of this
17 state are free and equal, and no matter what their sex, race, color, religion, ancestry,
18 national origin, disability, medical condition, genetic information, marital status, sexual
19 orientation, citizenship, primary language, or immigration status are entitled to the full
20 and equal accommodations, advantages, facilities, privileges, or services in all business
21 establishments of every kind whatsoever."

22 36. California Civil Code § 52 states, "Whoever denies, aids or incites a denial,
23 or make any discrimination or distinction contrary to Section 51, 51.5, or 51.6, is liable
24 for each and every offense for the actual damages, and any amount that may be
25 determined by a jury, or a court sitting without a jury, up to a maximum of three times the
26 amount of actual damage but in no case less than four thousand dollars (\$4,000) and any
27 attorney's fees that may be determined by the court in addition thereto, suffered by any
28 person denied the rights provided in Section 51, 51.5, or 51.6.

1 37. California Civil Code § 51(f) specifies, “a violation of the right of any
2 individual under federal Americans with Disabilities Act of 1990 (Public Law 101-336)
3 shall also constitute a violation of this section.”

4 38. The actions and omissions of Defendants alleged herein constitute a denial
5 of full and equal accommodation, advantages, facilities, privileges, or services by
6 physically disabled persons within the meaning of California Civil Code §§ 51 and 52.
7 Defendants have discriminated against Plaintiff in violation of California Civil Code §§
8 51 and 52.

9 39. The violations of the Unruh Civil Rights Act caused Plaintiff to experience
10 difficulty, discomfort, or embarrassment. The Defendants are also liable for statutory
11 damages as specified in California Civil Code §55.56(a)-(c).

12 **THIRD CAUSE OF ACTION**

13 **VIOLATION OF CALIFORNIA DISABLED PERSONS ACT**

14 40. Plaintiff incorporates by reference each of the allegations in all prior
15 paragraphs in this complaint.

16 41. California Civil Code § 54.1(a) states, “Individuals with disabilities shall be
17 entitled to full and equal access, as other members of the general public, to
18 accommodations, advantages, facilities, medical facilities, including hospitals, clinics,
19 and physicians’ offices, and privileges of all common carriers, airplanes, motor vehicles,
20 railroad trains, motorbuses, streetcars, boats, or any other public conveyances or modes
21 of transportation (whether private, public, franchised, licensed, contracted, or otherwise
22 provided), telephone facilities, adoption agencies, private schools, hotels, loading places,
23 places of public accommodations, amusement, or resort, and other places in which the
24 general public is invited, subject only to the conditions and limitations established by
25 law, or state or federal regulation, and applicable alike to all persons.

26 42. California Civil Code § 54.3(a) states, “Any person or persons, firm or
27 corporation who denies or interferes with admittance to or enjoyment of public facilities
28 as specified in Sections 54 and 54.1 or otherwise interferes with the rights of an

1 individual with a disability under Sections 54, 54.1 and 54.2 is liable for each offense for
2 the actual damages, and any amount as may be determined by a jury, or a court sitting
3 without a jury, up to a maximum of three times the amount of actual damages but in no
4 case less than one thousand dollars (\$1,000) and any attorney's fees that may be
5 determined by the court in addition thereto, suffered by any person denied the rights
6 provided in Section 54, 54.1, and 54.2.

7 43. California Civil Code § 54(d) specifies, "a violation of the right of an
8 individual under Americans with Disabilities Act of 1990 (Public Law 101-336) also
9 constitute a violation of this section, and nothing in this section shall be construed to limit
10 the access of any person in violation of that act.

11 44. The actions and omissions of Defendants alleged herein constitute a denial
12 of full and equal accommodation, advantages, and facilities by physically disabled
13 persons within the meaning of California Civil Code § 54. Defendants have
14 discriminated against Plaintiff in violation of California Civil Code § 54.

15 45. The violations of the California Disabled Persons Act caused Plaintiff to
16 experience difficulty, discomfort, and embarrassment. The Defendants are also liable for
17 statutory damages as specified in California Civil Code §55.56(a)-(c).

18 **FOURTH CAUSE OF ACTION**

19 **CALIFORNIA HEALTH & SAFETY CODE § 19955, et seq.**

20 46. Plaintiff incorporates by reference each of the allegations in all prior
21 paragraphs in this complaint.

22 47. Plaintiff and other similar physically disabled persons who require the use of
23 a wheelchair are unable to use public facilities on a "full and equal" basis unless each
24 such facility is in compliance with the provisions of California Health & Safety Code §
25 19955 et seq. Plaintiff is a member of the public whose rights are protected by the
26 provisions of California Health & Safety Code § 19955 et seq.

27 48. The purpose of California Health & Safety Code § 1995 et seq. is to ensure
28 that public accommodations or facilities constructed in this state with private funds

1 adhere to the provisions of Chapter 7 (commencing with Section 4450) of Division 5 of
2 Title 1 of the Government Code. The code relating to such public accommodations also
3 require that “when sanitary facilities are made available for the public, clients, or
4 employees in these stations, centers, or buildings, they shall be made available for
5 persons with disabilities.

6 49. Title II of the ADA holds as a “general rule” that no individual shall be
7 discriminated against on the basis of disability in the full and equal enjoyment of goods
8 (or use), services, facilities, privileges, and accommodations offered by any person who
9 owns, operates, or leases a place of public accommodation. 42 U.S.C. § 12182(a).
10 Further, each and every violation of the ADA also constitutes a separate and distinct
11 violation of California Civil Code §§ 54(c) and 54.1(d), thus independently justifying an
12 award of damages and injunctive relief pursuant to California law, including but not
13 limited to Civil Code § 54.3 and Business and Professions Code § 17200, et seq.

14 **FIFTH CAUSE OF ACTION**

15 **NEGLIGENCE**

16 50. Plaintiff incorporates by reference each of the allegations in all prior
17 paragraphs in this complaint.

18 51. Defendants have a general duty and a duty under the ADA, Unruh Civil
19 Rights Act and California Disabled Persons Act to provide safe and accessible facilities
20 to the Plaintiff.

21 52. Defendants breached their duty of care by violating the provisions of ADA,
22 Unruh Civil Rights Act and California Disabled Persons Act.

23 53. As a direct and proximate result of Defendants’ negligent conduct, Plaintiff
24 has suffered damages.

25 **PRAYER FOR RELIEF**

26 WHEREFORE, Plaintiff respectfully prays for relief and judgment against
27 Defendants as follows:
28

1 1. For preliminary and permanent injunction directing Defendants to comply
2 with the Americans with Disability Act and the Unruh Civil Rights Act;

3 2. Award of all appropriate damages, including but not limited to statutory
4 damages, general damages and treble damages in amounts, according to proof;

5 3. Award of all reasonable restitution for Defendants' unfair competition
6 practices;

7 4. Reasonable attorney's fees, litigation expenses, and costs of suit in this
8 action;

9 5. Prejudgment interest pursuant to California Civil Code § 3291; and

10 6. Such other and further relief as the Court deems just and proper.

11 **DEMAND FOR TRIAL BY JURY**

12 Pursuant to Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff hereby
13 demands a trial by jury on all issues so triable.

14
15 Dated: September 20, 2024

SO. CAL. EQUAL ACCESS GROUP

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18 By: /s/ Jason J. Kim
19 Jason J. Kim, Esq.
20 Attorneys for Plaintiff
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